IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/10/2002

CORAM

THE HONOURABLE MR. JUSTICE S. JAGADEESAN
AND
THE HON'BLE MR.JUSTICE MALAI.SUBRAMANIAN

CRIMINAL APPEAL NO.398 of 1997

1. Ramesh (A.1)
2. R. Srinivasan @ Seenu (A.2)
3. Y. Narendran (A.3)
4. Sathish Babu (A.4) .... Appellants

-Vs-

State of Tamil Nadu rep. by
Inspector of Police (Crimes)
G-3 Kilpauk Police Station
Chennai-10 ..... Respondent

Appeal filed under Sec.397 Cr.P.C against the conviction and sentence passed in S.C.No.318/96 dated 2.4.1997 on the file of Principal Sessions Judge, Madras.

For 1st appellants : Mr.K. Asokan
Senior Counsel for
Mr.P. Kumaresan

For 2 to 4 appellants : Mr.V. Gopinath
Senior Counsel for
M/s M. Rajasekaran and
Mr.K. Selvarangan

For respondent : Mr.E. Raja
Addl. Public Prosecutor

:JUDGMENT

MALAI.SUBRAMANIAN,J

The appellants 4 in number are accused 1 to 4 in S.C.No.318/96 on the file of Principal Sessions Judge, Chennai. They were convicted to undergo imprisonment for life for offence punishable under Sec.302 read with 34 IPC; to undergo 7 years R.I for offence punishable under Sec.397 read with 34 IPC;

to undergo 7 years R.I and to pay a fine of Rs.1,000/-, in default to suffer R.I for 3 months for the offence under Sec.449 IPC and to undergo 7 years R.I and to pay a fine of Rs.1,0 00/-, in default to suffer R.I for 3 months for offence punishable under Sec.201 read with 34 IPC, on the allegation that on 10.5.95 at about 3.00 or 3.30 p.m they trespassed into the house of the deceased Suseela Ranganathan with intent to commit robbery and with intent to commit her murder and after causing her death, took away 295.955 grams of gold jewels, 13 silver coins, 2 ladies watches and 3 key bunches and thereafter packed the dead body of Suseela Ranganathan and transported the same in a Fiat Car bearing Registration No:TTU – 4117 to the railway track in between Chetpet and Nungambakkan and placed the same on the railway track so as to make it appear that it is a run over case. The brief facts necessary to dispose of the appeal are as follows:

2. The deceased Suseela Ranganathan was a resident of No.125, R.B.I Quarters, Kilpauk and she was working as Grade.I Officer in Reserve Bank of India along with P.W.3. On 10.5.95 she went to the Bank and returned to the quarters and thereafter she was not seen alive. P.W.1– K.A. Ramasamy, Sambandhi (rk;ge;jp) of the deceased went to the quarters of the deceased at about 6.00 a.m on 15.5.95 to ascertain whether she was in the quarters because P.W.2 – her sister from Trichy complained to him that there was no response when they rang up to the deceased. He found the quarters locked. He went to the Office and enquired and found that she was absent after 10.5.95. He then passed on this information to Trichy.

3. On 17.5.95 he went to G-3 Police Station and gave a report Ex.P.1 to P.W.41 – Sub Inspector of Police, who registered a case in Cr. No.829/95 under the caption "woman missing". Ex.P.43 is the printed First Information Report. P.W.41 proceeded to the quarters of the deceased along with P.W.1 and found the quarters locked. After ascertaining that a mutilated body of a female was kept in the mortuary of Government General Hospital, Chennai, both of them went there, where he identified the body of Suseela Ranganathan. No jewels were found on the body.

4. In the meantime, P.W.6, who is the motorman (Driver), who took the electric train at 10.5.95 at 11.55 p.m from Beach Station, while reaching Nungambakkam, saw some obstruction in the railway track 100 feet away and though he applied break, he could not control the train and the same ran over on the body of a lady and stopped 150 meters away. He then after stopping the train, came with a torch light along with the Guard and found a lady lying dead. After clearing the body, he took the train. The Station Master presented a complaint to Egmore Railway Police and the same was registered in Cr.No.456/95 under Sec.174 Cr.P.C at 7.00 a.m on 11.5.95 by P.W.24 – Woman Head Constable of Egmore Railway police Station. The First Information Report is Ex.P.15. P.W.24 went to the place, where the body was lying, prepared Ex.P.10 – observation mahazar and drew rough sketch Ex.P.16. She also caused the dead body to be photographed. She then held inquest on the dead body and prepared Ex.P.17 Inquest report. Thereafter, the body was sent to Government General Hospital for autopsy with a requisition Ex.P.21.

5. P.W.30, Dr.C. Manohar, Assistant Professor, Forensic Medicines, Madras Medical College, Chennai conducted post- mortem on the body of Suseela Ranganathan, aged about 57 years on 18.5.95 at about 2.45 p. m and found the following injuries:

"1. Defacing, crushing injury involving head, face and neck and exposing the base of the cranial cavity; the scalp was torn irregularly with multiple comminuted fractures of the vault of the skull of varying sizes with irregular displacement bruising seen in some segments of the ectocranium and some areas of the sub scalpal region; the base of the skull with the facial bones was comminuted into multiple segments with irregular displacement and embedded into and distorted soft tissue of face; small quantity of liquified brain matter seen in the cranial cavity; the median structures of the front of the neck were not found. The cervical vertebra was found disrupted with communition and found embedded in the soft tissue of the back of the neck.
2) A lacerated wound with marginal bruising with abrasion of 16 x 10 cm over right shoulder which was partially amputated from right shoulder joint exposing the joint cavity with communition of upper end of shaft of the humerus with bruising around the soft tissue and on the surface of the fragments.
3) Partially amputation of left shoulder joint which is partially attached with shoulder joint through a tag of skin; the margin are bruised; fracture of shaft of left humerus into many pieces with laceration of surrounding soft tissue.
4) A partial avulsion of right hip joint with extruding of right hip bone through the lateral border of the right buttock and thigh with disarticulation of right sacr (torn) joint and pubic symphys is with fracture of public bone; the (torn) the skin were abraded with isolated bruising (torn) .....
5) Lower quadrant of both gluteal region and perineal region lacerated 10 x 16 x 8 cm.
6) Reddish abrasions: right supra clavicular region 18 x 10 cm; on left side of chest on mid clavicular line 12 x 12cm; on left lower costal margin 6 x 3 cm; on right hypochondrium 6 x 3 cm.
7) Fracture of 2 to 5 ribs at mid clavicular line on right side with intercostal bruising.
8) Fracture of 3 to 7 ribs at mid clavicular line on left side with intercostal bruising.
9)Fracture of middle third of both tibia and fibula on right side: Deeper muscles are exposed out; Margins are bruised.
10) Fracture middle third of left tibia and fibula without bruising in the surrounding soft tissues.
11) Fracture of lower third of femur without bruising in the surrounding soft tissues.
HERT: Cardiomegaly. Hypertrophy of all the chambers of the heart coronaries patent.
LUNGS: Early decomposition
Stomach: Empty Mucosa-nil abnormal
BLADDER:Empty uterus :Absent
All other internal organs were found early decomposition changes".
He issued Ex.P.22 Post-Mortem Certificate with an opinion that the deceased died of multiple crush injuries.

6. Meanwhile, P.W.14, who was working as a Plumber in the Railways and residing in Railway Quarters at Chetpet noticed a White Fiat Car-M.O.28 stationed near the quarters from 10.5.95, went to Chetpet Police Station on 16.5.95 and gave a report Ex.P.5. P.W.28 – Sub Inspector of Police, Chetpet Police Station registered a case in Cr.No.648/9 5, prepared Ex.P.18 printed First Information Report, went to the place and found the Car. He also prepared Ex.P.19 – Observation Mahazar and seized the Car under Ex.P.20 mahazar. One pillow in the car was also seized under Ex.P.2 mahazar. M.O.37 Beer Bottle found inside the car was seized under Form 95. P.W.29 Inspector of Police, Chetpet took up investigation in the case, ascertained the owner of the Fiat Car and questioned P.W.19, the father of the 1st appellant and then forwarded the car to the Court, since he came to know that a case was registered in G.3 Police Station.

7. P.W.2 – sister of the deceased came from Trichy and identified the body. P.W.3, the colleague of the deceased also identified the body. P.W.4, a doctor, who is a friend of the deceased and P.W.5, the caretaker of the Reserve Bank of India Staff Quarters also identified the body of the deceased. P.W.41 – Sub Inspector of Police after ensuring that the dead body found in the mortuary of the Government General Hospital was that of the deceased Suseela Ranganathan, went to Egmore and questioned the Railway Police and summoned P.W.31 – Finger Print Expert, who was taken to the quarters of the deceased. P.W.31 lifted three finger prints from an iron safe and gave markings J.1, J.2 and J.3 to them. They were also photographed. M.O.38 are photographs. Finger prints were compared with the prints taken from the fingers of the deceased. The left thumb impression of A.2 tallied with one impression. P.W.41 ascertained that after 10.5.95 the deceased did not go for work. On 19.5.95 after coming to know from Chetpet Police that the owner of the car is the father of the 1st accused, went to the house of the 1st accused and on seeing P.W.41, the 1st accused took to his heels. He was chased and apprehended and when questioned, he gave a statement and then produced M.O.1 series – a pair of gold bangles and the same were seized under Ex.P.12 mahazar. The 1st accused was arrested, brought to the police station and P.W.41 gave a Special Report Ex.P.44.

8. P.W.42 took up investigation. He then examined P.Ws.22 and 31 and recorded their statements. On the strength of the statement of the 1st accused, he altered the crime to one under Sec.120-B, 302 and 38 0 IPC. He prepared Express Report Ex.P.45 and sent the same to the Court. A.1 took P.W.42 and his party and pointed out 2nd, 3rd and 4th accused in Kasi Chetty Street and they were arrested and interrogated. The 3rd accused Narendran gave a statement in the presence of P.W.35, the admissible portion of which is Ex.P.46, in which he had stated that he had left a ring, a gold chain, a pair of diamond ear studs and a key bunch with his friend P.W.20 – Baskar and a pair of bracelets (f';fzk;) were left with another friend Mr. Lakshmana Rao - P.W.11 . The 4th accused gave a statement, the admissible portion of which is Ex.P.47. He produced a pair of diamond studs M.O.21 and the same were seized under Ex.P.30 mahazar. Then the statement of the 2nd accused was recorded, the admissible portion is Ex.P.48, in which he stated that he had kept the jewels in a bag at No.87, R.B.I quarters belonging to P.W.10- Subramaniam.

9. P.W.42 and the witnesses went to the house of P.W.20 – Baskar and recovered M.Os.16,18,20 jewels and 3 key bunches M.O.44 and the same were seized under Ex.P.11 mahazar. P.W.42 examined P.W.20 Baskar and recorded his statement. Then he returned to the police station. On 20.5.95 at about 9.30 he went to the quarters of the deceased and prepared Ex.P.49 rough sketch. At about 12.00 p.m, he took the deceased to the place, where the dead body was found and seized a small rope. At about 1.30 p.m, pursuant to the statement of the 2nd accused, P.W.42 went to No.87, R.B.I Quarters and questioned P.W.10 – Subramaniam, who handed over a bag which contained M.Os.1 to 19 jewels and the watches and the same were seized under Ex.P.9 mahazar. P.W.10 was also questioned by P.W.42 and a statement was recorded from him. Suspecting the appellants to be old offenders, their finger prints were taken and sent to the Finger Print Bureau. P.W.31 compared two other finger prints lifted in the quarters of the deceased with the finger prints of the deceased. He found the finger print marked J.3 tallying with the finger print of the 2nd accused Srinivasan. He gave a report Ex.P.25.

10. P.W.42 searched for P.Ws.37 and 38 (approvers), but could not apprehend them. On 28.5.95 he examined P.W.31 and some other witnesses. On 29.5.95 at about 11.00 p.m, he arrested P.Ws.37 and 38 and questioned them. They wanted to give statement before the Court and therefore, they were produced before the Court for recording their statements. A requisition was also given to the Chief Metropolitan Magistrate, Madras to record their statements under Sec.164 Cr.P.C. The Chief Metropolitan Magistrate gave a direction through Ex.P.36 to P.W.39, to IV Metropolitan Magistrate, Chennai to record the statement of P.Ws.37 and 38. Accordingly, he recorded the same. Thereafter, pardon was tendered to them.

11. P.W.42 examined the witnesses on various dates viz., 16.6.95, 24 .6.95, 25.6.95, 26.6.95 and 7.7.95. He also examined some witnesses on 27.7.95. On 1.8.95 he examined P.Ws.24 and 25 and recorded their statements. He seized blood stained saree of the deceased as produced by the Railway Police, who seized the same in Cr.No.456/95 and the saree was sent to the Court. He also gave a requisition to send the blood stained pillow and other M.Os for Chemical analysis. On 8.8.95 he went and examined Dr.C. Manokar – P.W.30 and recorded his statement. On 10.8.95 he examined P.W.21 and others. After completing investigation, he filed final report against all the four accused punishable under Secs.302, 451, 409, 397 and 201 read with 34 IPC. On 31.10.95 he produced the jewels before the Court. On 1.11.95 he produced the key bunches also before the Court. Since P.Ws.37 and 38 who are originally arrayed as accused Nos.5 and 6, turned as approvers, an amended Charge Sheet was filed on 11.2.96 against these four accused.

12. When the accused were questioned under Sec.313 Cr.P.C, their plea was one of denial. No witnesses were examined on their side.

13. There is no dispute that Suseela Ranganathan, the deceased in this case was working as Grade-I Officer in Reserve Bank of India and was staying in No,.125, RBI Quarters, Kilpauk. There is also no dispute that the deceased was not seen alive after 10.5.1995 since according to P.W.3, a co-worker, the deceased was last seen only on 10.5.1995 . After the body of

the deceased was sent to mortuary in General Hospital, P.W.1 - "Sambandhi" of the deceased, P.W.2 - elder sister of the deceased,P.W.3 a co-worker, P.W.4 a family friend of the deceased and P.W.5 a resident of RBI Quarters, identified the dead body as that of Suseela Ranganathan. Insofar as this identity of the body, a contention was made by the learned senior counsel Mr.K. Asokan, appearing for the 1st appellant that Ex.P.15 the complaint lodged with Railway Police, Egmore by the Guard who was in charge of the electric train which ran over the body, reads that a female aged about 25 years who suddenly trespassed was knocked down and killed, whereas the deceased was said to have been aged about 57 years as per Ex.P.22 Post Mortem Certificate. There is no evidence that besides the deceased there was another body found on the railway track on 11.5.95. The only question is whether the age of woman, who died, is 25 years as stated in Ex.P.15 or 57 years as found in the post mortem certificate Ex.P.22?

14. Insofar as this aspect is concerned, the relatives and friends of the deceased viz., P.Ws.1 to 5 have identified the body as that of Suseela Ranganathan and their case is that she was aged about 57 years. On the contrary though in Ex.P.15 a female aged 25 years was said to have been knocked down and killed by train, the person, who lodged the complaint, on which Ex.P.15 was registered has not been examined in Court. Ex.P.15 reveals that it was signed by one N. Vijayashankar and he has not been examined in Court. P.W.6 – the driver of the train alone was examined to prove the fact that the train ran over a female. He did not speak about the age of the woman. There is absolutely no evidence to indicate as to who informed the author of Ex.P.1 5 regarding the age of the dead body. In view of this discussion, we are of the view that there is no dispute with regard to the age of the deceased and there is no dispute with regard to the identity of the deceased and therefore, we hold that the prosecution has established that the body found on the track was only that of Suseela Ranganathan, aged about 57 years.

15. Insofar as the cause of death is concerned, the prosecution case is that all the four appellants caused the death of Suseela Ranganathan by strangulating her and thereafter removed the body from the quarters to the Railway track and then placed the same over the railway track so as to appear that the death was caused due to run over by the train. The Doctor – P.W.30 who did autopsy on the body of Susseela Ranganathan found amputations, lacerations, fractures and crush injuries and therefore, he gave an opinion that the deceased died of multiple crush injuries. When questioned by the defence in the cross examination, he replied that there was no occasion for him to find out whether death could have been caused by asphyxia. Though it is the duty of the prosecution to have elicited from the doctor that death could have been caused due to asphyxia , the defence lent its hand by questioning the doctor as to whether the death could have been caused due to asphyxia, probably anticipating a negative answer; but the doctor replied that there was no occasion to look into that aspect, most probably because the body was mutilated, crushed and there were so many fractures on the body. Naturally when one looks at the body which was run over by the train with so much of fractures, broken limbs, amputations and crush injuries, immediate opinion that could be formed is that death was due to crush injuries. That is

how the doctor also gave his opinion. Though cause of death usually is established by medical evidence, in cases of this nature, the Court has to take into consideration the surrounding circumstances also to find out the real cause of death. What was the necessity that compelled the deceased to go to the railway track and jump before the running train if it is the case of defence that the deceased could have jumped on the track in front of a running train? Secondly there is the evidence of P. W.7 – the watchman of Reserve Bank quarters to prove that at about 11.30 p.m on 10.5.95 a white colour fiat car went out side the gate and the 3rd accused was driving the car while 1st, 2nd and 4th accused were seated inside along with two other persons. The 3rd point is that the said white colour fiat car was found stationed near the railway colony by the side of the house of one Harikrishnan as per Ex.P.20, rough sketch drawn by P.W.28 – the Sub Inspector of Police, Chetpet Police Station while investigating into a complaint lodged by P.W.14, the first information report being Ex.P.18. There is no explanation from any of the accused as to how the said car belonging to the father of the 1st accused came to be seen near the railway track by the side of the railway quarters. Taking into consideration all these aspects and also in view of the fact that the doctor who did autopsy could not find out whether the death was due to asphyxia because of the mutilated nature of the body, we hold that the deceased Suseela Ranganathan died on account of homicidal violence. Corpus delicti can be proved by the production of the dead body or even by the circumstances proved by the prosecution. Though in this case, the body has been produced, still the cause of death may be due to asphyxia also, since according to the doctor, he had no occasion to probe into that fact. If the doctor would have answered that the death could not have been by asphyxia, the matter is different. The answer was very carefully made whereby he said that there was no occasion to look into that aspect at all. The prosecution ought to have probed further to elicit from the doctor certain answers, but any how even assuming that the deceased was crushed to death by train according to P.W.30, still the proved circumstances in this case about the involvement of the accused 1 to 4 clearly indicate that the body of the deceased should have been placed only by them on the railway track after murdering her.

16. Though the prosecution case as per the 2nd charge is that the 1 st and 3rd accused strangled the deceased with the help of a rope while 2nd and 4th accused caught hold of her, in the absence of any eye witness account, the specific overt acts of each accused should not have been mentioned in the charge, but the charge that all the four accused committed murder of the deceased and therefore, liable to be convicted under Sec.302 read with 34 IPC cannot be assailed on the ground that the specific overt acts were attributed to each of the accused in the charge. This case rests purely on circumstantial evidence. In the absence of any eye witness to speak about the overt act of each accused, the Courts while framing charges but are tempted to look into the statements of the accused recorded by the police or recorded under Sec.164 Cr.P.C. to attribute the overt acts of each accused. If 161 Cr.P.C statement of an accused recorded by the Judicial Magistrate as a confession is found on record, that piece of evidence being admissible can be looked into for that purpose. But in this case none of the accused 1 to 4 have given any statements much less confession statements to the Judicial Magistrates. Therefore, the Court ought not to have framed the 2nd charge by

distributing the overt acts to each of the four accused merely on the statement recorded from them under Sec.161 Cr.P.C. Because of these lapses on the part of investigating agencies while filing final reports and on the part of the Courts while framing charges, the real accused shall not be allowed to escape resulting in failure of justice.

17.The learned senior Counsel appearing for the 1st appellant vehemently argued that as per Ex.P.15, the first information report lodged by the Station Master, a female aged about 25 years suddenly trespassed, knocked down and killed and therefore, though there is difference of age, there is every likelihood of the deceased jumping in front of the approaching train. As we have already stated, the person who lodged the first information which led to the registration of Ex.P.15 was not produced before the Court. As a matter of fact, it was P.W.6 – Motorman who alone had seen the body of the deceased lying on the track. He had only stated that some 100 meter away he was able to notice some obstructions on the railway track and immediately he applied the break. His further evidence is that the train did not stop all of a sudden, but it could stop only after running over the body at a distance of 150 meters. This evidence of P.W.6 only indicates that he was able to see obstructions 100 meters away when he was driving the train. Though he made an attempt, he could not stop the train before crushing the body. It is not his evidence that he saw somebody jumping into the track in front of the approaching train. He is the witness competent to speak about the fact. When he has only stated that he saw some obstructions on the track, later found to be a body of a female he could have informed the authorities concerned only like that. Who ever gave the report, which resulted in lodging Ex.P.15 First Information Report, would have given the information only after it was passed on to them. P.W.6 in his cross examination categorically denied the suggestion that he informed the Guard that a 35 year old lady jumped in front of the train. The First information Ex.P.15 appears to be a twisted information. Therefore, that cannot be used as a piece of evidence to contradict the statement of P.W.6 especially when the first informant was not examined in Court. If this document is beneficial to the defence, the defence could have cited the informant as the witness on their side. That has also not been done in this case. Therefore, we have no hesitation to hold that it is not a case where any lady jumped in front of the train, but it is only a case where the body of the deceased was placed on the railway track to screen the act of murder.

18. The prosecution let in the evidence of P.W.7 the Watchman of Reserve Bank Quarters where the deceased was residing to prove that he saw them leaving the quarters in a Fiat Car driven by the 3rd accused at about 11.30 p.m on 10.5.95. He has also identified all the four accused stating that he knew them already. According to P.W.10, a clerk in the Reserve Bank of India, the appellants 2,3 and 4 are also the residents of R.B.I Quarters only. That is why P.W.7 was able to identify them clearly. Nothing has been elicited in his cross examination to compel the Court to reject his evidence. Therefore, we hold that the prosecution proved the fact that at about 11.30 p.m the 3rd accused drove the fiat car from the quarters and appellants 1,2 and 4 were seated inside.

19. The second piece of evidence is that the white Fiat Car was spotted by P.W.14 nearby the railway quarters and he lodged Ex.P.5 complaint at Chetpet Police Station. Pursuant to that complaint, P.W.28 registered a case, prepared Ex.P.18 first information report, observed the same, prepared Ex.P.19 – observaiton mahazar and also drew a rough sketch Ex.P.20. Ex.P.19 reveals that the car was stationed at a distance of 65 feet from the railway track and the sketch Ex.P.20 also shows the railway track. According to P.W.6, the body was located on the track in between Chetpet and Nungambakkam. He would further state that he could see the body immediately after he crossed the Chetpet bridge. Ex.P.16 rough sketch also reveals that the dead body was found some 200 feet away from the Chetpet over bridge. We can take judicial notice of the situation of the over bridge from where there is a path leading to Chetpet Railway Statio n which is nearby the bridge. After crossing the bridge, some 200 feet away, the body was seen. P.W.14, the Railway Plumber, who is residing in Chetpet Railway Quarters had noticed the Fiat Car M.O.28 stationed nearby the quarters. There is no dispute that M.O.28 belongs to the father of the 1st accused. Though P.W.19 the father of the 1st accused claims to have lodged a complaint with Saidapet Police on 13.5.95 regarding the theft of his Car, he failed to produce the copy of such a complaint. He has also stated that on 18.5.95 having come to know that his car was available at Chetpet Police Station, he went there. Therefore, in the absence of production of the report, said to have been lodged by P. W.19, we are constrained to hold that the evidence of P.W.19 that he lodged a report of theft of Car with Saidapet Police is nothing but a defence made by him to relieve his son from the offence. In view of the proximity of the places where the dead body on the track was found and where the Car, M.O.28 was stationed, we can safely infer that M.O.28 car should have been used for transporting the deceased. Though we have already said that in the absence of eye witness account the prosecution cannot fix the place, time and manner of causing death of the deceased, merely because we find fault with the prosecution for framing an improper charge, the entire case need not be thrown out, if available evidence is sufficient to hold the accused guilty. Thus, according to us, the evidence of P.W.6 that all the four accused travelled in the Fiat Car obtains corroboration from the fact that the car of A.1's father was found nearby the railway track in close proximity with the place where the dead body of the deceased was found. Therefore, this is yet another circumstances incriminatory in nature.

20. Though P.Ws.37 and 38, who were arrayed as accused along with these appellants, turned approvers and though P.W.37 turned hostile, P.W.38 had spoken to the events that took place. The evidence of P.W.38 being in the nature of the statement of the accused, though it cannot be made a basis for conviction, it can be used to lend corroboration to the evidence already on record. P.W.38 would state that all the four accused met him at about 8.30 p.m on 10.5.95, while P.W.37 was also with him and informed him that they have committed murder of Suseela Ranganathan and the body was packed in a gunny bag and it should be removed. His further evidence is that the Car of the 1st accused TTU 4117 was found in front of the quarters of the deceased at about 11.30 p.m and the key of the quarters of the deceased was with the 3rd accused. He would further state that the 3rd accused opened the quarters and they all lifted the bag, placed the same in the dickey and went through

Chetpet over bridge till School gate. According to him, the body was taken and placed over the railway track and they also saw an approaching electric train towards Tambaram. His further evidence is that he and P.W.37 ran away and others also ran away. He claims to have seen the car next day at the same place with deflated tyres. His evidence corroborates the evidence of P.Ws.7 and 14 and lends assurance to their evidence.

21. The learned Senior Counsel appearing for the 1st appellant on this point contended that P.W.14 claims to have seen the car from the morning of 10.5.95, whereas even according to the prosecution, the occurrence took place in the afternoon of 10.5.95 and therefore, the evidence of P.W.14 cannot be used to convict the accused. P.W.14 gave evidence in the month of January 1997 about the incident that took place on 16.5.95. Merely because in the cross examination he says that he noticed the car in the morning of 10.5.95 when he, was proceeding to the work, the prosecution case that the car was used for transporting the deceased only during the night of 10.5.95 cannot be rejected, especially when a complaint was lodged by P.W.14 only on 16.5.95. If he would have lodged the complaint on 10.5.95 itself, then the contention of the learned senior counsel can be upheld. But he lodged the complaint only on 16.5.95 and therefore, there is every likelihood of his forgetting the date on which he saw the vehicle due to lapse of time, since after all human memory is not infallible. Moreover, Ex.P.5 the complaint which was lodged by P.W.14 only states that the car was stationed only from the night of 10.5.95. Of course, P.W.14 admits that he gave Ex.P.5 complaint. Therefore, the contention of the learned senior counsel cannot be appreciated in the light of the contents of Ex.P.5.

22. The evidence of P.W.38 not only supports and strengthens the evidence of P.Ws.7 and 14 but there is an extra judicial confession made by these accused to P.W.38 that they killed the deceased. The statement of the accused to P.W.38, who is not an accused presently and who is only a witness in this case is admissible as an extra judicial confession of the accused.

23. The further evidence that the car belonging to the 1st accused was used for transporting the deceased was strengthened by the recovery of a pillow M.O.29, from inside the car under Ex.P.52 mahazar by P.W.28. The pillow was compared with the pillow seized under Ex.P.2 from the quarters of the deceased and they tallied. Therefore, it is yet another circumstance to prove that the car of the 1st accused was used by these accused to transport the deceased.

24. The next piece of evidence is that P.W.41 went to the house of the 1st accused on 19.5.95. The 1st accused on spotting P.W.41 tried to take to his heels and immediately he was caught and questioned. It is the further evidence of P.W.41 that gold bangles M.O.1 were recovered under Ex.P.12 mahazar. P.W.36 and P.W.22 who are the attestors in Ex.P.12 mahazar corroborate the evidence of P.W.41. M.O.1 bangles were identified by P.Ws 1 to 3. The accused also have no claim over M.O.1. This recovery of M.O.1 connects the accused with the crime. The learned senior counsel for the 1st appellant submits that the recovery is false, since M.O.1 was sent to Court only on 31.10.95 as per the evidence of P.W.42 – the Investigating Officer.

The evidence of P.W.42 in the cross examination is that the concerned Magistrate for Kilpauk Police Station is XIV Metropolitan Magistrate, but final report has to be filed only before the II Metropolitan Magistrate and therefore, the Magistrate informed him to keep the jewels and produce them at the time of filing the final report and that is why he sent the jewels on 31.10.95. If the jewels were recovered on 19.5.95 from the 1st accused and immediately afterwards from A.2 to A.4, P.W.42 had no necessity to keep them with him for more than five months and therefore, his statement that he was advised by the Court to produce the jewels at the time of filing final report appears to be true. The jewels taken away by the accused are said to be 296 grams and it cannot be said that all these jewels were procured at a later point of time to link these accused with the crime. Therefore, we accept the explanation offered by P.W.42 for the delay caused in sending the jewels to the Court.

25. P.W.41 – the Sub Inspector of Police after recovering M.O.1 gold bangles from the 1st accused, produced the 1st accused and M.O.1 to P.W.42 – the Inspector of Police along with the statement recorded from the 1st accused. After altering the first information report to one under Secs.302, 380 read with 120B IPC, P.W.42 took the 1st accused and the 1st accused identified 2nd, 3rd and 4th accused at Kasi Chetti Street and thereafter 2nd, 3rd and 4th accused were arrested.

26. P.W.42 questioned A3 and recorded his statement, the admissible portion of which is Ex.P.46. In his statement A3 would say that he entrusted a ring, a gold chain, a pair of diamond ear studs and a key bunch with P.W.20 and he gave a pair of bracelet to P.W.11. P.W.42 questioned 4th accused who also gave a statement, the admissible portion of which is Ex.P.47. He then recovered a pair of diamond ear studs- M.O.21 from the person of A4 under Ex.P.30 mahazar. When A2 was questioned, he informed P.W.42 that he has placed a bag containing jewels in the house of P.W.10 in RBI quarters, the admissible portion of the statement is Ex.P.48. P.W.42 was taken by A3 to the house of P.W.20 where P.W.20 handed over a cover containing M.Os. 16,1 8 and 20 viz., a diamond ring, gold chain and diamond tups. P.W.42 recovered the same under Ex.P.11 mahazar. This piece of evidence has been spoken to by P.W.42, P.W.20 and P.W.35. Since P.W.35 spoke about the recovery of only M.Os. 18 and 19 the learned senior counsel Mr.V. Gopinath, appearing for A3 contends that the recovery has not been proved. The recovery was made in the year 1995 while the evidence was recorded in 1997. Lapse of memory may be the reason for not remembering all the items as he failed to mention M.O.20 and the key bunch and P.W.20 also failed to mention key bunch though he spoke about the recovery of M.Os.16,18 and 20. Therefore, the evidence of recovery cannot be disputed on that score. His further contention is that though two gold bangles were said to have been recovered from P. W.11, P.W.11 did not support the case of the prosecution and turned hostile. Just because P.W.11 turned hostile, the evidence of P.W.42 regarding the recovery is not affected.

27. P.W.42 was taken by the 2nd accused to the quarters of P.W.10. P.W.42 then questioned P.W.10, who produced a bag containing M.Os.1 to 5, 17

and 19. They were recovered under the cover of Ex.P.9 mahazar along with M.O.10 violet colour bag, M.O.11 – plastic cover, M.O.41 key bunch, M.O.42 – another key bunch and M.O.43 – a key. This evidence was corroborated by P.W.16.

28. The jewels seized from A.1 and A.4 and the jewels seized on the information furnished by A.2 and A.3 were identified to be the jewels of the deceased by P.W.1 – "Sambandhi" of the deceased, P.W.2 – elder sister of the deceased and P.W.3 – an officer working in the Reserve Bank of India along with the deceased. It is not the case of the defence that either of the accused is the owner of any of the jewels. No explanation was also forthcoming from any of the accused as to how they came to possess the jewels belonging to the deceased. The learned Senior Counsel Mr.V. Gopinath appearing for the 3rd accused contends that according to P.W.42, at the instance of the 2nd accused M.Os.2 and 3 were seized whereas, P.W.9 would state that the 3rd accused sold M.Os.2 and 3. In the cross examination itself it was elicited from P.W.9 that he could not definitely say whether M.Os.2 and 3 were the jewels recovered from him. Merely because P.W.9 pointed out 3rd accused instead of 2nd accused, the recovery cannot be disputed. There is possibility of 2nd accused also accompanying 3rd accused and selling the jewels M.Os.2 and 3 through 3rd accused. After all the evidence on record only shows the conjoint acts of all the accused. The Supreme Court in 1985 SC (Crl) at 263 has been pleased to hold that the testimony of panch witnesses will not become doubtful merely on their failure to identify the accused. In 1979 SCC (Crl.) 56 it has been held by the Supreme Court that if the evidence of the Investigating Officer, who recovered the M.Os is convincing, the evidence as to recovery need not be rejected on the ground that the seizure witnesses do not support the prosecution version.

29. The learned Senior counsel Mr.V. Gopinath while attacking the recovery at the instance of the 2nd accused contends that P.W.10 did not state that it was the 2nd accused who kept the bag M.O.30 containing jewels in his house and according to him it was one Nagath Ali who informed him about the 2nd accused placing the bag in the house. According to the learned senior counsel in the absence of examination of Nagath Ali it cannot be held to have been proved that it was the 2nd accused who placed the bag with the jewels in the house of P.W.10 . Though Nagath Ali was not examined, the recovery has been made on the information furnished by the 2nd accused. There is absolutely no information preceding the information furnished by the 2nd accused and therefore, the information furnished by the 2nd accused leads to the discovery of a fact that a bag M.O.30 containing the jewels from the house of P.W.10. Consequent recovery corroborates the information given by the accused and the knowledge of the accused regarding the presence of the jewels in the house of P.W.10 connects the accused with the crime under Sec.27 of the Evidence Act. Therefore, non examination of the said Nagath Ali is not fatal to the prosecution at all. P.W.16 has corroborated the evidence of P.W.42 in this regard. Therefore, we hold that the jewels inside M.O.30 bag were recovered on the information furnished by the 2nd accsued alone.

30. The circumstances that all the accused were seen together by P.W.7 going in a Fiat Car at about 11.30 p.m on 10.5.95 from R.B.I Quarters,

where the deceased was residing, the circumstance that the Fiat car of A.1's father was found stationed near by the railway track where the body of the deceased was found, the circumstance that after 10.5.95 the deceased was not seen alive by anybody, the circumstance that certain jewels were recovered from the persons of A.1 and A.4 and the circumstance that some other jewels were recovered on the information furnished by 2nd and 3rd accused, the circumstance that the jewels were identified to be that of the deceased by P.Ws.1 to 3 and the evidence of P.Ws.10, 11 and 20 conclusively go to prove that it were these accused who were responsible for the death of the deceased and for the commission of robbery also. Further the evidence of P.W.3 8 – approver lends corroboration to the above evidence. According to P.W.38, as stated supra, the accused confessed before him that they caused the death of the deceased. He also says that the body was transported in the fiat car.

31. A further piece of evidence was also adduced by the prosecution in the nature of finger print of the 2nd accused through P.W.31. P.W.31, a Finger Print Expert lifted three finger prints in the steel bureau, out of which, one print tallied with the print of the 2nd accused. P.W.42 would say that the finger prints of all the accused were taken by the constable on his direction. The learned senior counsel contends that the evidence of Finger Print Expert cannot be relied on since Police Standing Orders 836 (4)(k) has not been followed in this case. According to that Order finger impression shall be taken only by Officers declared by a Superintendent or, in the City of Madras, by the Commissioner of Police to be qualified to take clear and well rolled impressions. In support of his contentions he relies on a Bench ruling of this Court reported in Shanmugayya and Others vs State (1992 (3) Crimes 505.The Bench itself has stated in paragraph 36 that of course, it is possible to argue that Police Standing Orders do not have statutory force and therefore, non following of the Standing Order cannot be held in favour of the appellants. While considering whether the non following of the procedure of the Police Standing Orders was only irregular which did not affect the fact of finger print impression, only a direction was given to the State Government to make rules under Sec.8 of the Identification of the Prisoners Act 1920. It has to be remembered that when the Expert gives an opinion that the Finger Print lifted in a scene of crime tallies with the specimen finger print sent by the police, if the specimen finger print is not that of the accused, can it be said that the specimen finger print was taken from somebody else and then sent for expert's examination? Merely because there was violation of a police standing order, we are unable to hold that the evidence of the Finger Print Expert has to be totally eschewed from consideration. Even if the evidence of the expert is not taken into consideration, still the circumstances narrated earlier would only unclinchingly prove the guilt of all the four appellants beyond all reasonable doubts.

32. The evidence adduced in this case not only proved that the appellants have murdered Suseela Ranganathan but they have also robbed her of her jewels. The Supreme Court in the case of Sanjay Alias Kaka vs State (NCT of Delhi) reported in 2001 SCC (Crl) 449 held as follows:
"Besides Section 27, the Courts can draw presumptions under Section 1 14, Illustration (a) and Section 106 of the Evidence Act. The presumption permitted to be drawn under Section 114 Illustration (a) of the Evidence Act

has to be read along with the "important time factor". If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. The murder and robbery in the instant case were part of the same transaction and the accused from whom the recoveries were made, consequent upon their disclosure statements, did not offer any explanation regarding their possession of the stolen properties".

33.In the case of Sri Bhagwan vs State of Rajasthan (2001 (3) Crimes 35 (SC),the Apex Court has been pleased to hold that if the appellant could not give an explanation as to how he came into possession of various gold ornaments belonging to the deceased, it is a fit case where the presumption under Illustration (a) to Section 114 of the Evidence Act could be drawn that the appellant committed the murder and the robbery.

34. Yet another case reported in 2002 AIR SCW 2060 (Ezhil vs State of Tamil Nadu) is an apt decision to the facts of the present case. Their Lordships have been pleased to hold thus:
"The accused have not been able to properly or reasonably explain as to the legitimacy or origin of their possession of the articles carried by the deceased when he arrived from abroad at the airport at Chennai. In such circumstances, since the facts relating to the same being especially within the exclusive knowledge of the accused, the legislature engrafted a special rule in Section 106 of the Evidence Act, to meet certain exceptional cases in which not only it would be impossible but disproportionately difficult for the prosecution to establish such facts which are specially and exceptionally within the exclusive knowledge of the accused and which he could prove without difficulty or inconvenience. The appellants in this case have miserably failed to explain their lawful possession of those articles with them that really belonged to and were in the possession of the deceased when he landed at the airport at Chennai. Consequently, it was legitimate for the Courts below, on the facts and circumstances of this case, to draw the presumption not only of the fact that they were in possession of the stolen articles after committing robbery but also committed the murder of the deceased, keeping in view the proximity of time within which the act of murder was supposed to have been committed and body found and the articles recovered from the possession of the accused".

35.In this case though the offence took place on the night of 10.5.9 5, the appellants were able to be arrested on 19.5.95 and the recoveries of the jewels of the deceased were made on that day and on 20.5.9 5 i.e., within 10 days. The prosecution was able to prove the circumstances which taken together complete the chain of circumstances to prove the guilt of the accused and the huge recoveries made from them and at their instance is a sufficient circumstance to hold that they were not only guilty of robbery but also guilty of murder. The proximity of time between the death of the deceased and the recoveries of the jewels of the deceased at the instance of the accused enables the Court to draw an inference that the accused/appellants not only

robbed the jewels of the deceased, but committed her murder also. In view of the above discussions, we have no reason to disturb the finding of the trial Judge that the appellants are guilty of offences punishable under Secs.449, 302 read with 34, 397 read with 34 and 201 read with 34 IPC.

36. In the result, the conviction and the sentence passed on the appellants are confirmed and the appeal stands dismissed.

(S.J.J.,) (M.S.J.,)
3-10-2002
sr

Index:yes
Web site:yes
To
1. The Principal Sessions Judge, Chennai
2. The Public Prosecutor, High Court, Madras
3. The Director General of Police, Madras
4. The District Collector, Chennai
5. The Superintendent, Central Prison, Vellore
6. The Superintendent, Central Prison, Chennai
7. The Inspector General of Police (Crime),
G-3, Kilpauk Police Station, Chennai-10